

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR A DEVIATION FROM)	CASE NO.
COMMISSION REGULATIONS REGARDING)	91-475
BACK BILLING FOR SLOW METERS)	

O R D E R

Kentucky Utilities Company ("KU") has requested a deviation from Commission Regulation 807 KAR 5:041, Section 16(5),¹ and relief from any obligation to back bill a customer for meters running more than 2 percent slow when such billing is not cost effective. KU contends that "[b]ack billing a customer for a slow meter, when the adjustment is small, is not cost effective and creates the potential for an adverse customer relationship."²

Commission Regulation 807 KAR 5:041, Section 16(5), establishes performance standards for electric meters. Those registering no more than 2 percent fast or slow are considered

¹ Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the commission and utilized by the utility.

² Letter from Robert M. Hewitt, Vice President, Kentucky Utilities Company, to Lee M. MacCracken, Executive Director, Public Service Commission (December 17, 1991).

accurate. Those outside these narrow zones are considered inaccurate.

KRS Chapter 278 requires utilities to take corrective action when a meter is not registering accurately. KRS 278.160(2)³ prohibits a utility from accepting less compensation than that prescribed in its filed rate schedules. Courts in other jurisdictions interpreting similarly worded statutes have held that utilities must strictly adhere to their published rate schedules and may not, either by agreement or conduct, depart from them. Haverhill Gas Co. v. Findel, 258 N.E.2d 294 (Mass. 1970); Capital Properties Co. v. Public Service Comm'n, 457 N.Y.S.2d 635 (N.Y. App. Div. 1982); West Penn Power Co. v. Nationwide Mut. Ins. Co., 228 A.2d 218 (Pa. Super. 1967).

The primary effect of KRS 278.160(2) is to bestow upon a utility's filed rate schedule the status of law. "The rate when published becomes established by law. It can be varied only by law, and not by act of the parties. The regulation . . . of . . . rates takes that subject out of the realm of ordinary contract in some respects, and places it upon the rigidity of a quasi-statutory enactment." New York N.H. & H.R. Co. v. York and Whitney, 102 N.E. 366, 368 (Mass. 1913). See also Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co., 83 N.W.2d 147 (Wis.

³ No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

1957). While a utility may file or publish new rate schedules to change its rates pursuant to KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule.

This inflexibility is in large measure the result of a strong public policy to ensure rate uniformity, to "have but one rate, open to all alike, and from which there could be no departure." Boston & M.R.R. v. Hooker, 233 U.S. 97, 112 (1914). Equality among customers cannot be maintained if enforcement of filed rate schedules is relaxed. For this reason, neither equitable considerations nor a utility's negligence may serve as a basis for departing from filed rate schedules. Boone County Sand and Gravel Co. v. Owen County RECC, Ky.App., 779 S.W.2d 224 (1989); City of Wilson v. Carolina Builders of Wilson, Inc., 379 S.E.2d 712 (N.C. Ct. App. 1989) Chesapeake & Potomac Tel. Co. of Virginia v. Bles, 243 S.E.2d 473 (Va. 1978). To do so would increase the potential for fraud, corruption, and rate discrimination.

While KRS 278.160(2) limits a utility's authority to depart from its filed rate schedule, KRS 278.170(1)⁴ imposes an affirmative obligation upon a utility to charge and collect its prescribed rates. KRS 278.170(1) requires a utility to treat all similarly situated customers in substantially the same manner. If a utility fails to collect from a customer the full amount

⁴ No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

required by its filed rate schedule, it effectively grants a preference in rates to that customer as it allows him to pay less than other customers for the same service. In Corp. De Gestion Ste-Foy, Inc. v. Florida Power & Light Co., 385 So.2d 124 (Fla. Dist. Ct. App. 1980), an action involving underbilling resulting from an employee's misreading of a meter, the Florida District Court of Appeals reviewed a statute very similar to KRS 278.170(1) and declared:

The public policy embodied in this and similar statutory provisions precludes a business whose rates are governmentally regulated from granting a rebate or other preferential treatment to any particular individual. Accordingly, it is universally held that a public utility or common carrier is not only permitted but is required to collect undercharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount.

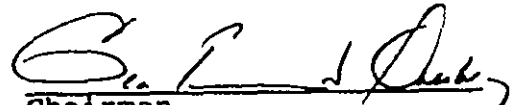
Id. at 126 (emphasis added). See also Sigal v. City of Detroit, 362 N.W.2d 886 (Mich. Ct. App. 1985).

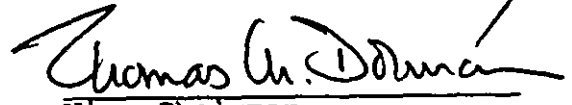
The Commission finds that a utility's failure to back bill for charges when a meter is inaccurate, i.e., running more than 2 percent slow, is equivalent to charging less than the filed rate and to granting preferential treatment. Such action is inconsistent with the statutory duty imposed by KRS 278.160 and 278.170. The Commission is without authority to permit a deviation from this duty. Union Light, Heat and Power Co. v. Pub. Serv. Comm'n, Ky., 271 S.W.2d 361, (1954).


IT IS THEREFORE ORDERED that KU's application for deviation from Commission Regulation 807 KAR 5:041, Section 16(5), is denied.

Done at Frankfort, Kentucky, this 24th day of February, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director